

§ 1225.4

23 CFR Ch. II (4–1–07 Edition)

State's criminal code and, if the State has an ALR law, all applicable provisions of the State's ALR law.

(f) *Has enacted and is enforcing* means the State's law is in effect and the State has begun to implement the law.

(g) *Operating a motor vehicle* means driving or being in actual physical control of a motor vehicle.

(h) *Standard driving while intoxicated offense* means the non-BAC *per se* driving while intoxicated offense in the State.

(i) *State* means any one of the 50 States, the District of Columbia, or Puerto Rico.

§ 1225.4 Adoption of 0.08 BAC *per se* law.

In order to avoid the withholding of funds as specified in § 1225.8 of this part, and to qualify for an incentive grant under § 1225.5 of this part, a State must demonstrate that it has enacted and is enforcing a law that provides that any person with a blood or breath alcohol concentration (BAC) of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense. The law must:

- (a) Apply to all persons;
- (b) Set a BAC of not higher than 0.08 percent as the legal limit;
- (c) Make operating a motor vehicle by an individual at or above the legal limit a *per se* offense;
- (d) Provide for primary enforcement;
- (e) Apply the 0.08 BAC legal limit to the State's criminal code and, if the State has an administrative license suspension or revocation (ALR) law, to its ALR law; and
- (f) Be deemed to be or be equivalent to the standard driving while intoxicated offense in the State.

§ 1225.5 General requirements for incentive grant program.

(a) *Certification requirements.* (1) To qualify for a first-year grant under 23 U.S.C. 163, a State must submit a certification by an appropriate State official, that the State has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and § 1225.4 of this part and that the funds will be used for eligible projects and programs.

(i) If the State's 0.08 BAC *per se* law is currently in effect and is being enforced, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____ has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and that the funds received by the (State or Commonwealth) of _____ under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(ii) If the State's 0.08 BAC *per se* law is not currently in effect, but will become effective and be enforced before the end of the current fiscal year, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____ has enacted a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and will become effective and be enforced as of (effective date of the law), and that the funds received by the (State or Commonwealth) of _____ under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(2) To qualify for a subsequent-year grant under 23 U.S.C. 163, a State must submit a certification by an appropriate State official.

(i) If the State's 0.08 BAC *per se* law has not changed since the State last qualified for grant funds under this program, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____ has not changed and is enforcing a 0.08 BAC *per se* law, which conforms to 23 U.S.C. 163 and 23 CFR 1225.4, and that the funds received by the (State or Commonwealth) of _____ under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

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(ii) If the State's 0.08 BAC *per se* law has changed since the State last qualified for grant funds under this program, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____ has amended and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and that the funds received by the (State or Commonwealth) of _____, under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(3) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each Regional Administrator will forward the certifications it receives to appropriate NHTSA and FHWA offices.

(4) Each State that submits a certification will be informed by the agencies whether or not it qualifies for funds.

(5) To qualify for grant funds in a fiscal year, certifications must be received by the agencies not later than July 15 of that fiscal year.

(b) *Limitation on grants.* A State may receive grant funds, subject to the following limitations:

(1) The amount of a grant apportioned to a State under § 1225.4 of this part shall be determined by multiplying:

(i) The amount authorized to carry out section 163 of 23 U.S.C. for the fiscal year; by

(ii) The ratio that the amount of funds apportioned to each such State under section 402 for such fiscal year bears to the total amount of funds apportioned to all such States under section 402 for such fiscal year.

(2) A State may obligate grant funds apportioned under this Part for any project eligible for assistance under title 23 of the United States Code.

(3) The Federal share of the cost of a project funded with grant funds awarded under this part shall be 100 percent.

§ 1225.6 Award procedures for incentive grant program.

(a) In each Federal fiscal year, grant funds will be apportioned to eligible

States upon submission and approval of the documentation required by § 1225.5(a) and subject to the limitations in § 1225.5(b). The obligation authority associated with these funds is subject to the limitation on obligation pursuant to section 1102 of the Transportation Equity Act for the 21st Century (TEA-21).

(b) As soon as practicable after the apportionment in a fiscal year, but in no event later than September 30 of the fiscal year, the Governor's Representative for Highway Safety and the Secretary of the State's Department of Transportation for each State that receives an apportionment shall jointly identify, in writing to the appropriate NHTSA Regional Administrator, the amounts of the State's apportionment that will be obligated to highway safety program areas and to Federal-aid highway projects. Each NHTSA Regional Administrator will forward copies of the joint letters to the appropriate NHTSA and FHWA offices.

(c) Apportionments will not be made by the NHTSA and FHWA unless this letter from the State is received.

§ 1225.7 Certification requirements for sanction program.

(a) Beginning with FY 2004, to avoid the withholding of funds, each State shall certify to the Secretary of Transportation, before the last day of the previous fiscal year, that it meets all the requirements of 23 U.S.C. 163 and this part.

(b) The certification shall contain a statement from an appropriate State official that the State has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR part 1225.

(1) If the State's 0.08 BAC *per se* law is currently in effect and is being enforced, the certification shall be worded as follows:

I, (name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, has enacted and is enforcing a 0.08 BAC *per se* law that conforms to the requirements of 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law).

(2) If the State's 0.08 BAC *per se* law is not currently in effect, but will become effective and be enforced before